

SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

04 NCAC 02R .0101 PURPOSE

The purpose of the Alcoholic Beverage Control System is to provide regulation and control of the manufacture, distribution, advertisement, sale, possession and consumption of alcoholic beverages to serve the public welfare. It is the objective of the North Carolina Alcoholic Beverage Control Commission at all times to conform to that purpose.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0102 LOCATION AND ADDRESS

The principal office of the North Carolina Alcoholic Beverage Control Commission is located in Raleigh, North Carolina. The mailing address is 3322 Garner Road, Post Office Box 26687, Raleigh, North Carolina 27611-6687. This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

*History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0103 DEFINITIONS

(a) As used throughout this Chapter:

- (1) "ABC Law" or "ABC Laws" means any statute or statutes in Chapter 18B or in Article 2C of Chapter 105, and the rules issued by the Commission under the authority of Chapter 18B.
- (2) "Administrator" means the principal administrative officer of the Commission.
- (3) "Agent," "alcohol law enforcement agent," or "ALE agent" means an enforcement agent of the Alcohol Law Enforcement Division, North Carolina Department of Crime Control and Public Safety.
- (4) "Applicant" means any person who requests the issuance of a permit from the Commission.
- (5) "Chairman" means the chairman of the Commission.
- (6) "Commission" means the North Carolina Alcoholic Beverage Control Commission.
- (7) "Industry Member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages.

- (8) "Permit" means a written or printed authorization to engage in some phase of the alcoholic beverage industry that may be issued by the Commission.
- (9) "Permittee" means a person to whom a permit has been issued by the Commission.
- (b) The definitions in Chapter 18B apply to these Rules.

*History Note: Authority G.S. 18B-101; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .0200 - STRUCTURE

04 NCAC 02R .0201 COMMISSION

The North Carolina Alcoholic Beverage Control Commission shall be composed of a chairman and two associate members.

The chairman shall have the powers and perform the duties prescribed by the Commission including the authority to appoint, promote, demote, and discharge all subordinate officers and employees of the Commission. The Commission shall have all the authority and duties given it by the provisions of the North Carolina General Statutes.

*History Note: Authority G.S. 18B-200; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0202 COMMISSION MEETINGS

The Commission shall meet in monthly sessions open to the public in order to make final decisions on hearing cases, to adopt, amend or repeal alcoholic beverage control rules, and to consider and act upon any other business pending before the Commission. The Commission may call special meetings in addition to the monthly meetings to consider and act upon any unfinished business pending before the Commission.

The press shall be notified of the time and place of both monthly and special meetings.

The Commission may hold executive sessions with regard to personnel matters. These sessions are not open to the public nor is the press notified of these sessions.

Minutes of all Commission meetings shall be kept on file.

*History Note: Authority G.S. 18B-200; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0203 DIVISIONS

*History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .0204 ADMINISTRATIVE FUNCTIONS

The principal administrative officer shall be the administrator who executes rules, policies and procedures governing the sale of alcoholic beverages and coordinates the functions of the Commission with local boards and industry.

*History Note: Authority G.S. 18B-200(d); 18B-203; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .0205 LEGAL FUNCTIONS

The Legal Division processes cases involving permittees charged with violations of the ABC laws, and represents the Commission in contested cases before the Office of Administrative Hearings. Legal staff may also serve as hearing officers in cases filed under Article 12 of Chapter 18B.

*History Note: Authority G.S. 18B-104; 18B-200(d);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .0206 AUDIT DIVISION

*History Note: Authority G.S. 18B-104;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

SECTION .0300 - PUBLICATIONS: RECORDS: COPIES

04 NCAC 02R .0301 DISTRIBUTION OF RULES

04 NCAC 02R .0302 PUBLIC INSPECTION OF RULES AND RECORDS

History Note: Authority G.S. 12-3.1(c); 18B-207; 150B-11; 150B-62;

Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02R .0303 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS

(a) Distribution of Rules and Statutes. A copy of the Commission's Rules and Chapter 18B of the General Statutes will be distributed at no charge to each local ABC board, each ALE agent, ABC officer and local law enforcement officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of the ABC Laws. Copies of the ABC laws are available to any interested person who contacts the Commission at the following address or phone number:

North Carolina Alcoholic Beverage Control Commission
3322 Garner Road
Raleigh, NC 27611-6687
(919) 779-0700
(MAILING ADDRESS: 4307 Mail Service Center, Raleigh, NC 27699-4307)

The following items are available and should be purchased together for complete access to the ABC laws of this State:

- (1) Chapter 18B of the North Carolina General Statutes, at a cost of seven dollars (\$7.00).
- (2) Title 4, Chapter 2 of the North Carolina Administrative Code, containing all the rules of the Commission, at a cost of seven dollars and fifty cents (\$7.50).

Payment by check or cash must be made prior to receiving copies of either publication.

(c) Copies of Individual Rules or Statutes. For a fee of twenty-five cents (\$0.25) per page, copies of rules, amendments and general statutes are available to any person contacting the Commission at the address and phone number in Paragraph (b) of this Rule.

(d) Public Inspection of Records. Inspection of records and documents in the possession and custody of the Commission is governed by the provisions of Chapter 132 of the North Carolina General Statutes. Fees for copying public records shall be twenty-five cents (\$0.25) per page.

History Note: Authority G.S. 12-3.1; 18B-207; 132-1 through 132-1.3; 132-6;
Eff. July 1, 1992.

04 NCAC 02R .0304 FEE FOR PERMITTEE LISTS; COMPUTER SERVICES

(a) Lists. For a fee of seven cents (\$0.07) per name, the Commission will provide to any interested person a list of permittees by county or by types of permits issued. Orders for a permittee list should be placed at least

72 hours in advance. The purchaser of the list will be notified of the total cost, including postage, and will be required to remit the total cost plus postage, by check or money order, before receiving a copy of the list.

(b) Other Data Processing Services. The Commission will attempt to provide data processing services related to the Commission's powers and duties upon request. Fees for such services will be determined based on the actual cost to the Commission and shall be required to be paid in advance.

*History Note: Authority G.S. 18B-207; 150B-19(5)e;
Eff. July 1, 1992.*

SECTION .0400 - RULE-MAKING

04 NCAC 02R .0401 GENERAL PROVISIONS

*History Note: Authority G.S. 18B-207; 150B-16;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .0402 PETITION FOR ADOPTION OF RULES

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Commission shall address the petition to the North Carolina Alcoholic Beverage Control Commission, 3322 Garner Road, Post Office Box 26687, Raleigh, North Carolina 27611-6687.

(b) Contents. The petition should contain the following information:

- (1) Drafts of proposed rule or amendment, or summary of its contents;
- (2) reasons for the adoption, amendment or repeal of rule;
- (3) citation of specific authorities showing the legality of the proposed adoption, amendment or repeal of the rule;
- (4) effect of existing rules or orders;
- (5) any data supporting proposal;
- (6) effect of existing rules on existing practices in the area involved, including case factors;
- (7) names and addresses of persons most likely to be affected by the proposal; and
- (8) name and address of each petitioner.

*History Note: Authority G.S. 18B-207; 150B-16;
Filed November 24, 1981;
Legislative Delay Eff. December 31, 1981;
Eff. January 12, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0403 ADMINISTRATIVE ACTION

Based on a study of the petition and other relevant supporting material, the Commission shall deny the petition or initiate rule-making proceedings within a reasonable time following submission of the petition.

- (1) If the Commission determines that the adoption, amendment or repeal of a rule will serve no public interest, it may deny the petition; the Commission shall notify the petitioner in writing of its decision to deny the petition, stating the reasons for the denial.
- (2) If the Commission determines that the proposed adoption, amendment or repeal of a rule will serve the public interest, it shall initiate rule-making proceedings by issuing a rule-making notice, as provided in this Section.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-16;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0404 NOTICE OF RULE-MAKING HEARINGS; MAILING LIST

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Commission shall give notice to all interested parties of the proceedings in accordance with the requirements of Chapter 150B of the General Statutes.

(b) Mailing List. Any person desiring to be placed on the mailing list for the rule-making notices may file a request in writing, furnishing his name and mailing address to the Commission. The request shall state the subject areas within the authority of the Commission for which notice is requested.

(c) Fee Charged. The cost to be on the mailing list for rule-making notices shall be fifteen dollars (\$15.00) per year. A notice and invoice will be mailed in February of each year to persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year will be deleted from the list.

*History Note: Authority G.S. 18B-207; 150B-21.2;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; August 1, 1988; May 1, 1984.*

04 NCAC 02R .0405 RULE-MAKING HEARING

(a) Location. Unless otherwise stated in a particular rule-making notice, rule-making hearings shall be held in the administrative hearing room of the Commission's Raleigh office.

(b) Oral Presentations. Any person desiring to present oral data, views or arguments on the proposed rule is encouraged to file a written notice of that desire with the Chairman. The notice of the oral presentation should contain a brief summary of the individual's or organization's views with respect to the proposed adoption, amendment or repeal of a rule, and a statement of the length of time the speaker intends to speak.

(c) The Chairman shall preside at the rule-making hearing, and shall ensure that each person participating is given a fair opportunity to present oral arguments, comments and data supporting his position.

*History Note: Authority G.S. 18B-207; 150B-21.2(e);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

SECTION .0500 - EMERGENCY RULES

04 NCAC 02R .0501 ADOPTION OF PERMANENT REGULATION

*History Note: Authority G.S. 18B-207; 150A-13;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .0502 REVOCATION OR SUSPENSION OF PERMIT

When the sale of alcoholic beverages is suspended in any area of the state pursuant to a state of emergency as declared by the Governor in accordance with Article 36A of Chapter 14 of the General Statutes, the Commission may revoke or suspend the permit of any person violating any order or rule issued pursuant to that action.

*History Note: Authority G.S. 18B-110; 18B-207; 14-288.1 through 14-288.20;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .0600 - DECLARATORY RULINGS

04 NCAC 02R .0601 DEFINITION

"Aggrieved party" means any person substantially affected by any statute or rule administered or adopted by the Commission.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0602 ISSUANCE: GROUNDS

Upon request of an aggrieved party, except where the Commission for good cause finds issuance of a ruling undesirable, the Commission shall issue a declaratory ruling if the request for such a ruling will:

- (1) determine the validity of a rule previously adopted by the Commission; or
- (2) determine the applicability of a particular statute or rule administered or adopted by the Commission to a given specific fact situation.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0603 REQUEST FOR DECLARATORY RULING

(a) All requests for a declaratory ruling to contest the validity of a rule previously adopted by the Commission shall supply the following information:

- (1) name and address of aggrieved party;
- (2) statute or rule to which the request relates;
- (3) a brief statement of the manner in which the aggrieved party is affected or may be affected by the statute or rule;
- (4) names and addresses of additional third parties known to the aggrieved party who may possibly be affected by the requested ruling;
- (5) complete and accurate statement of all material facts;
- (6) statement whether or not the aggrieved party is aware of any pending Commission action or court action that may bear on the applicability of the statute or rule to the party's particular situation;
- (7) brief statement of the arguments and legal authority supporting the party's position on the applicability of this statute or rule; and
- (8) statement of whether or not a conference is desired and reasons for requesting conference.

The aggrieved party shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request form is true and accurate.

(b) The request and any supporting materials relevant to the request shall be sent to the North Carolina Alcoholic Beverage Control Commission, 3322 Garner Road, Post Office Box 26687, Raleigh, North Carolina 27611-6687.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0604 GROUNDS FOR DENIAL OF RULING ON VALIDITY

A request for a declaratory ruling to determine the validity of a rule may be denied unless:

- (1) It is shown that since the adoption of the rule by the Commission, circumstances have so changed that a declaratory ruling is warranted; or
- (2) It is shown that in the records of the rule-making hearing that was held upon the rule in question, the Commission failed to consider specified relevant matters.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0605 REQUEST FOR DECLARATORY RULING: SPECIFIC FACT SITUATIONS

*History Note: Authority G.S. 18B-207; 150A-11(1); 150A-17;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .0606 GROUNDS FOR DENIAL: PENDING CONTROVERSY

The Commission will not issue a declaratory ruling when the issue or issues presented by the aggrieved party are the subject of a matter pending before the Commission or in a court of law.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982.*

04 NCAC 02R .0607 WITHDRAWAL OF REQUEST FOR DECLARATORY RULING

At any time prior to issuance, the Commission in its discretion may permit an aggrieved party to withdraw the request for a declaratory ruling, any such request for withdrawal to be in writing.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982.*

**04 NCAC 02R .0608 NOTICE OF DENIAL OF REQUEST
04 NCAC 02R .0609 ISSUANCE OF RULING**

*History Note: Authority G.S. 18B-207; 150A-11(1); 150A-17;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .0610 EFFECT OF DECLARATORY RULING

A declaratory ruling shall be binding upon the Commission in its dealings with the party requesting the ruling unless the Commission finds a misstatement of material fact or the failure to state a material fact, the omission of which makes the request misleading. The Commission, however, shall not be bound by that declaratory ruling in dealing with third parties where the Commission, for good cause, believes that a different course of action is justified and that a ruling should be changed with respect to different persons or fact situations.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0611 ALTERATION OF DECLARATORY RULING

The Commission, on its own motion, or upon the motion of any interested person, may change or modify a declaratory ruling previously issued by the adoption of a new or different ruling. Such a subsequent ruling shall apply prospectively only.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .0612 JUDICIAL REVIEW OF DECLARATORY RULINGS

For purposes of judicial review, the Commission shall preserve any and all requests for rulings, written comments by interested parties, any manuscripts or summaries of oral proceedings, any matter considered by the Commission in making the decision, and the decision, together with the reasons therefor.

*History Note: Authority G.S. 18B-207; 150B-11; 150B-17;
Eff. January 1, 1982;*

Amended Eff. May 1, 1984.

SECTION .0700 - PERSONNEL POLICIES: COMMISSION

04 NCAC 02R .0701 STANDARDS FOR COMMISSION AND EMPLOYEES

- (a) Financial Interests Prohibited. No member or employee of the Commission shall have or acquire any financial interest in the business, equipment or premises operated by any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages.
- (b) Relations. No member or employee of the Commission shall be related by blood, to the degree of first cousin or closer, to any person engaged or employed in the production, sale or distribution of alcoholic beverages in this State.
- (c) Gifts. No employee or Commission member shall accept any gift or other thing of value from any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages that would result in a violation of any general statute or Executive Order.
- (d) Entertainment. Except as prohibited elsewhere in these Rules reasonable entertainment of members or employees by a permittee or his representative is proper when that member or employee is entertained in an official capacity as a representative of the Commission, such as reasonable entertainment at state or national conventions or similar events, or at any time for good and proper reason that will not tend to influence the member or employee in the discharge of his duties with the Commission.

*History Note: Authority G.S. 18B-201; 18B-207;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .0702 DISCIPLINARY ACTION OF EMPLOYEE

All employees of the Commission shall be subject to the policies established by the Office of State Personnel pertaining to disciplinary action, suspension and dismissal.

In addition to the grounds for disciplinary action provided by the Office of State Personnel, the following shall be additional grounds for disciplinary action:

- (1) willful disregard of the published policies of the North Carolina Alcoholic Beverage Control Commission, or
- (2) violation of any law pertaining to alcoholic beverages.

*History Note: Authority G.S. 18B-201; 18B-202; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
RRC Objection due to lack of authority and lack of necessity Eff. May 21, 1992;
Amended Eff. July 6, 1992.*

SECTION .0800 - ADJUDICATION: CONTESTED CASES

04 NCAC 02R .0801 DEFINITIONS

*History Note: Authority G.S. 18B-207; 150B-11; 150B-23;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02R .0802 NOTICE OF PROPOSED COMMISSION ACTION; OFFERS IN COMPROMISE

(a) Notice of Alleged Violation. If facts reported by a law enforcement officer indicate a violation of the ABC laws, the Commission shall send a Notice of Alleged Violation to the permittee, which shall contain a short and plain statement of the facts alleged, and a reference to the particular sections of the statutes or rules involved. The notice may also contain an offer to settle the case, and an indication of the procedure by which this may be accomplished.

(b) Offers in Compromise. A permittee may enter into a stipulated settlement or offer in compromise pursuant to G.S. 18B-104, subject to ratification by the Commission. If a permittee indicates a desire for a hearing, or does not respond to the Notice of Alleged Violation, the Commission will file a petition with the Office of Administrative Hearings. Contested case procedures are governed by Chapter 150B of the General Statutes and the rules of the Office of Administrative Hearings.

*History Note: Authority G.S. 18B-104; 18B-203(a)(12); 18B-207; 150B-22; 150B-23;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .0803 DENIAL OF APPLICATION FOR PERMIT: HEARING

*History Note: Authority G.S. 18B-207; 150B-11; 150B-23;
Eff. January 1, 1982;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).*

04 NCAC 02R .0804 SUSPENSION OR REVOCATION: OFFICIAL NOTICE OF HEARING

*History Note: Authority G.S. 18B-207; 150B-11; 150B-23;
Eff. January 1, 1982;*

Amended Eff. May 1, 1984;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 02R .0805 SERVICE OF NOTICE

History Note: Authority G.S. 18B-207; 150B-11; 150B-23;
Filed November 24, 1981;
Legislative Delay Eff. December 31, 1981;
Eff. January 12, 1982;
Repealed Eff. July 1, 1992.

04 NCAC 02R .0806 SUBPOENAS

04 NCAC 02R .0807 CHALLENGE OF SUBPOENA: PROCEDURE

04 NCAC 02R .0808 CHALLENGE OF SUBPOENA: RULING

History Note: Authority G.S. 18B-207; 150B-11; 150B-27;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02R .0809 VENUE OF HEARINGS

History Note: Authority G.S. 18B-207; 18B-906(b); 150A-24;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.

04 NCAC 02R .0810 PRE-HEARING CONFERENCE

04 NCAC 02R .0811 INTERVENTION

04 NCAC 02R .0812 DISCOVERY

History Note: Authority G.S. 18B-207; 150B-11; 150B-23; 150B-28; 150B-33;
Eff. January 1, 1982;
Amended Eff. January 1, 1986; May 1, 1984;
Repealed Eff. July 1, 1992.

04 NCAC 02R .0813 DEPOSITIONS

*History Note: Authority G.S. 18B-207; 150B-11(1); 150B-28;
Eff. January 1, 1982;
Repealed Eff. January 1, 1986.*

04 NCAC 02R .0814 FILING AND FORM OF BRIEFS: MOTIONS: DOCUMENTS

04 NCAC 02R .0815 CONTINUANCES

04 NCAC 02R .0816 DISQUALIFICATION OF HEARING OFFICER

04 NCAC 02R .0817 UNAVAILABILITY OF HEARING OFFICER

04 NCAC 02R .0818 HEARING PROCEDURE

04 NCAC 02R .0819 FINDINGS: CONCLUSIONS: RECOMMENDATIONS OF HEARING OFFICER

*History Note: Authority G.S. 18B-207; 150B-11; 150B-25; 150B-28; 150B-32; 150B-34;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02R .0820 FINAL ADMINISTRATIVE DECISION: HEARING

- (a) Right to be Present at Final Administrative Decision; Notice. Each party to a contested case and his attorney of record shall receive reasonable notice of the location, hour and date when the findings of fact and recommendation of the administrative law judge will be reviewed by the Commission for a final disposition of the case.
- (b) Continuances. The chairman may grant continuances for just cause upon two working days oral or written notice.
- (c) Service of Notice. Service of notice of final administrative action shall be by certified mail. If notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice. If service cannot be made by certified mail, then the notice will be served personally or in accordance with G.S. 1A-1, Rule 4 (j1).

*History Note: Authority G.S. 18B-207; 150B-36;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; September 1, 1988; May 1, 1984.*

04 NCAC 02R .0821 ARTICLE 12 HEARINGS; PETITION AND NOTICE

(a) Initiation of Hearing. A hearing under Article 12 of Chapter 18B of the General Statutes (Wine Distribution Agreements Act) shall be commenced by the filing of a petition with the Commission. The petition shall state the party's contentions in detail, and set forth chronologically the events surrounding the winery's termination of the agreement.

(b) Requests for Relief. In any case in which a wholesaler requests that the Commission provide relief in a dispute with a winery under Article 12, the Commission may deem that request to be in the nature of a request for a hearing, and may conduct a hearing to determine if the winery has good cause to terminate an agreement with the wholesaler, or to determine if the wholesaler has rectified the reasons given by the winery for the termination.

(c) Notice of Hearing. A Notice of Hearing shall be mailed to the parties in a dispute under Article 12 at least 15 days prior to the hearing. The notice will be served by certified mail or in accordance with G.S. 1A-1, Rule 4 (j1). In the event service is made by certified mail, the delivery date on the return receipt shall be the date of notice. The notice will contain a short and plain statement of the issues to be resolved by the Commission, the date, time, and place of the hearing, and the name of the hearing officer who will conduct the hearing, if the Commission determines that it will not preside at the initial hearing.

(d) Rules of Procedure. Hearings conducted under Article 12 of Chapter 18B of the General Statutes will be conducted in accordance with the Rules of Civil Procedure as contained in G.S. 1A-1, and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

History Note: Authority G.S. 1A-1, Rule 4(j1); 7A-750; 18B-203(a)(1),(2); 18B-207; 18B-1205; Eff. July 1, 1992.

04 NCAC 02R .0822 ARTICLE 12 HEARINGS; EVIDENCE

The provisions of G.S. 150B-29 relating to evidence shall apply to hearings conducted under Article 12 of Chapter 18B of the General Statutes.

History Note: Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1204; 18B-1205; Eff. July 1, 1992.

04 NCAC 02R .0823 FINAL ADMINISTRATIVE DECISION; ORDER

(a) Right to Submit Proposed Findings. The parties in a hearing conducted under Article 12 shall have an opportunity to file proposed findings of fact and conclusions of law within 30 days of the conclusion of the initial hearing.

(b) Recommended Decision. If a hearing conducted under Article 12 is presided over by a hearing officer, the hearing officer shall issue a recommended decision that contains proposed findings of fact and conclusions of law. The hearing officer shall serve a copy of the recommended decision upon all parties and the members of the Commission who will make the final administrative decision. Service shall be in the manner prescribed in Rule .0821(c) of this Section.

(c) Exceptions. The parties to a case heard under Article 12 shall have the right to file written exceptions to a recommended decision by the hearing officer. Exceptions shall be filed with the Commission within 30 days of receipt of the recommended decision.

(d) Hearing Conducted by Commission. In lieu of assigning a hearing officer to preside over the initial hearing, the Commission may conduct the initial hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties has expired, the Commission will issue a final administrative decision and order that determines the issues set forth in any prior pre-hearing order.

(e) Petition to Office of Administrative Hearings. In any case heard by the Commission under Article 12 of Chapter 18B of the General Statutes, if the Commission finds evidence of violations of Article 12 of Chapter 18B, or any other ABC law, it may commence proceedings in accordance with the provisions of Rule .0802 of this Section.

*History Note: Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1205; 18B-1207(c); 150B-23;
Eff. July 1, 1992.*

SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS

04 NCAC 02R .0901 BORROWING MONEY

Before a local board borrows money, it shall consider the following factors:

- (1) the number of stores in a service area;
- (2) the estimated population in a service area;
- (3) the location of stores in a service area;
- (4) the nature and amount of the outstanding debt of the local board;
- (5) whether the borrowing is for the purchase of fixed assets, inventory or both;
- (6) the adequacy of the accounting system used or proposed to be used by the local board;
- (7) its compliance with rules of the Commission;
- (8) history of operating profits; and
- (9) projected profits and ability to retire the debt.

*History Note: Authority G.S. 18B-702(b),(e);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .0902 MAINTENANCE OF WORKING CAPITAL

- (a) "Working Capital" means the total of cash, investments and inventory less all unsecured liabilities.
- (b) A local board shall set its Working Capital requirements at not less than two weeks' average gross sales of the latest fiscal year nor greater than four months' average gross sales of the latest fiscal year. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

*History Note: Authority G.S. 18B-702(e); 18B-805(d);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; June 1, 1988; May 1, 1984.*

04 NCAC 02R .0903 DEPOSITS

- (a) Each local board shall designate as its official depositories one or more banks, savings and loan associations or trust companies in this State.
- (b) The amount of funds on deposit in an official depository or deposited at interest shall be secured as provided in the Rules of the Local Government Commission at 20 NCAC 7.

*History Note: Authority G.S. 18B-702(e);
Eff. May 1, 1984.*

04 NCAC 02R .0904 INVESTMENTS

- (a) Each local board shall adopt an investment program suitable to its own needs and situation. The investment program shall be designed so that investments and deposits at interest can be converted into cash when needed.
- (b) The finance officer shall manage the investment program subject to the directives and restrictions imposed by the local board and within the restrictions of applicable statutes.

*History Note: Authority G.S. 18B-702(e);
Eff. May 1, 1984.*

04 NCAC 02R .0905 DAILY DEPOSITS

- (a) Each officer whose duty it is to collect or receive moneys of the local board shall deposit into an official depository the collections and receipts daily. If the local board gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Deposits in an official depository shall be reported to the finance officer by means of a duplicate deposit ticket.

- (b) A change fund necessary for daily operation of an ABC store shall be established by each local board and maintained in a secure place on the store's premises and shall not be subject to the daily deposit rule. Each change fund shall be maintained in the amount and place established by the local board.
- (c) The finance officer may at any time audit the records maintained by any employee collecting sales revenue and may prescribe the form and detail of these records.
- (d) The Commission shall waive or alter the daily deposit requirement for any local board for good cause shown and where adequate security for the funds involved is demonstrated.

*History Note: Authority G.S. 18B-702(d),(e);
Eff. May 1, 1984.*

04 NCAC 02R .0906 FINANCE OFFICER: DUTIES

- (a) The general manager of each local board shall serve as finance officer. The local board may designate deputy finance officers to aid the officer in the performance of his duties and perform other duties delegated to them by the finance officer or the local board.
- (b) The finance officer shall:
 - (1) keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules of the Commission;
 - (2) disburse all moneys of the board in strict compliance with these Rules;
 - (3) prepare statements of financial condition as often as the governing board requires information;
 - (4) receive and deposit all moneys received or supervise the receipt and deposit of money by other authorized employees;
 - (5) supervise the investment of idle funds of the local board;
 - (6) ensure that all internal controls established by the local board are followed; and
 - (7) perform other duties as may be assigned to him by law, by the local board or by the rules of the Commission.

*History Note: Authority G.S. 18B-702(e);
Eff. May 1, 1984;
Amended Eff. July 1, 1992.*

04 NCAC 02R .0907 ANNUAL INDEPENDENT FINANCIAL AUDIT

- (a) Each local board shall have its accounts audited as soon as possible after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report directly to the local board. The audit contract shall be of a standard form approved by the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year, when the financial officer shall file two copies of the audit report and management letter with the Commission.
- (b) Each officer and employee of the local board having custody of public money or responsibility for keeping records of financial or fiscal affairs shall produce books and records requested by the auditor or the

Commission and shall divulge any information relating to fiscal affairs that they request. If any member of the local board or any employee conceals, falsifies or refuses to deliver or divulge any books, records, or information with intent to mislead the auditor or impede or interfere with the audit, he is subject to removal for cause pursuant to G.S. 18B-203(a)(8).

(c) Disclosure of the distribution of profits shall include every element that is applicable under G.S. 18B-805 in a schedule prepared for inclusion with the annual audited financial statements. In addition the schedule shall be supported by a listing of each person who receives moneys from the local board, the date of payment and, if applicable, the purpose for which the payment was made and restrictions on use of the payment. The listing shall be so designated to provide the same totals as were used in the schedule for each type of distribution.

*History Note: Authority G.S. 18B-702(c),(e);
Eff. May 1, 1984.*

04 NCAC 02R .0908 ACCOUNTING SYSTEM

(a) Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues and expenses. Conformity to the Uniform Accounting Procedures for all local boards shall be indicative of the adequacy of the system.

(b) The fiscal year for local boards shall begin July 1 and end June 30.

(c) All checks shall be signed by the finance officer or properly approved deputy finance officer or by another official or member of the local board as designated by the local board.

*History Note: Authority G.S. 18B-702(e);
Eff. May 1, 1984.*

04 NCAC 02R .0909 TRAVEL POLICIES

(a) Travel Policy Required. Each local board shall adopt and adhere to rules establishing travel policies to govern the following activities:

- (1) responsibility of board members and employees in incurring expenses while travelling on board business;
- (2) modes of transportation authorized for travel on official business;
- (3) reimbursement allowances for travel, including mileage reimbursements;
- (4) reimbursement allowances for lodging and meals;
- (5) reimbursement allowances for conference or convention registration fees;
- (6) travel advances;
- (7) authorization for travel;
- (8) incidental travel expenses including tips, tolls, parking fees, taxi fares, and rental vehicles;
- (9) telephone calls made while travelling; and
- (10) reimbursement procedures and documentation of expenses.

The travel policy rules and subsequent amendments shall be made available to each employee and board member.

(b) Rules to Conform to Local or State Policies. Travel policy rules adopted by a local board shall conform, at a minimum, to travel policies adhered to by either the local appointing authority or the Office of State Budget and Management of the State of North Carolina.

(c) Rules to be Filed with Commission. Each local board shall file a certified copy of its travel policies and procedures, and any amendments thereto, with the Commission within 10 days of the adoption, or amendment, of the policies by the local board.

*History Note: Authority G.S. 18B-702(e);
Eff. July 1, 1992.*

SECTION .1000 - LOCAL ABC BOARD: PERSONNEL POLICIES

04 NCAC 02R .1001 STANDARDS FOR LOCAL ABC BOARD MEMBERS AND EMPLOYEES

*History Note: Authority G.S. 18B-207; 18B-700;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .1002 USE OF ABC PROPERTY

Local board members and employees shall not engage in or allow the conduct of any business other than official business on property controlled by the ABC system, including stores, board facilities and warehouses.

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1003 CONSUMPTION OF ALCOHOLIC BEVERAGES

(a) No employee of any local board, while on duty during the hours prescribed by the supervisor, shall consume any alcoholic beverages except when that employee is engaged in undercover activities.

(b) No employee of a local board shall consume or permit the consumption of any alcoholic beverages on the premises of an ABC store or warehouse.

(c) No employee of a local board shall be or become intoxicated while on duty or on the premises of an ABC store or warehouse.

*History Note: Authority G.S. 18B-207; 18B-301(f); 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1004 EMPLOYMENT AGE REQUIREMENT

A person employed by a local board shall be at least 18 years of age unless waived by the commission.

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982;
Amended Eff. February 1, 1986.*

04 NCAC 02R .1005 WAREHOUSE: PRESENCE OF UNAUTHORIZED PERSON PROHIBITED

Personnel employed by a local board shall be the only persons permitted to enter the warehouse, except for:

- (1) truck drivers who need to enter in order to verify the amount of merchandise delivered;
- (2) members of the Commission and its representatives; and
- (3) local board members, the local board supervisor, and their duly authorized representatives.

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982.*

04 NCAC 02R .1006 EMPLOYMENT: REMOVAL: OF LOCAL BOARD MEMBER OR EMPLOYEE

- (a) Improper Influence. Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.
- (b) Power of Removal. After consulting with a local board, the Commission may remove any member of a local board who is unfit to serve thereon and may remove any board member or discharge any employee of a local board for cause.
- (c) Cause for Removal. Disqualification of a local board member or employee under the law or violation of the terms or spirit of the ABC laws is cause for the Commission to remove the member or employee. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.
- (d) Hearing. Any local board member or employee removed from office or discharged by the Commission may request a hearing before the Commission. Such a request operates to stay the action of the Commission with regard to the matter until after the hearing, unless the Commission finds that the public interest requires

immediate action. At the hearing, the employee or his counsel may examine all evidence used against him and present evidence in his own behalf.

*History Note: Authority G.S. 18B-203(a)(8); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1007 EMPLOYMENT AND DISCHARGE OF PERSONNEL

*History Note: Authority G.S. 18B-203(8); 18B-207;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .1008 CONFLICTS OF INTEREST

(a) Financial Interest Prohibited. No local board member or employee shall have any direct or indirect interest in any manner whatsoever in any firm, corporation, company or enterprise that manufactures, produces, buys, mixes, bottles, sells, stores or transports spirituous liquor.

(b) Employment of Relatives. No local board shall employ in any capacity any person related to a local board member or member of any other authority that appoints members of the local board by blood to a degree of first cousin or closer, nor shall the spouse of any board member be employed by the board.

(c) Employment of Board Members. No member of a local board shall be employed in any capacity by the board, nor be paid or receive any compensation of any kind from the board, except for compensation as a member thereof, which compensation has been established by the appointing authority. No local board member nor member of the local governing authority that appoints members of the local board shall be appointed as manager of a store, or manager, supervisor, director or administrator of the local system. No member of a board or other appointing authority that appoints members of a local board shall be employed in any capacity by that local board. The local board shall carry out its powers and duties as a board and shall not delegate the operation of the system to individual members.

(d) Contracts Prohibited. Members of a local board, acting on behalf of the board, shall not enter into any contracts or agreements or be in any manner interested in any contract or agreement for their own benefit or in the profits thereof, whether privately, openly, singly, or jointly with another member of a local board. Local boards shall not, on behalf of the board, enter into any contract or agreement of any kind with:

- (1) any member of any other authority that appoints members of the local board;
- (2) any person who is related by blood to any member of the board to a degree of first cousin or closer; or
- (3) any spouse of a board member.

(e) Membership on Appointing Board Prohibited. No member of the local board shall be a member of the appointing authority that appoints the local board while serving as a member of that local board.

(f) Exceptions. Notwithstanding the provisions of this Section, the Commission may grant exceptions from this Rule pursuant to G.S. 18B-201 in cases of extreme hardship and where the public interest would not be placed in jeopardy.

*History Note: Authority G.S. 18B-201; 18B-207; 18B-700(g);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1009 PERSONNEL MANUAL

- (a) Each local board shall establish policies and rules governing each of the following:
- (1) Initial employment of employees, including qualifications and requirements for new employees;
 - (2) Compensation and benefits;
 - (3) Hours and days of work, holidays, vacation, sick leave and other matters pertaining to the conditions of employment;
 - (4) Promotion, transfer, demotion and suspension of employees;
 - (5) Separation or termination of employees;
 - (6) Granting of salary increases;
 - (7) Employee grievance procedures; and
 - (8) Any other programs or procedures as may be necessary to promote efficiency and to provide for a fair and reasonable system of personnel administration.
- (b) A local board is encouraged to model its personnel policies and procedures after those adopted by the county or municipality in which it operates.
- (c) A local board shall not adopt a rule or policy that conflicts with the provisions of Chapter 18B or these Rules.

*History Note: Authority G.S. 18B-203(a)(10); 18B-701(2); 18B-807;
Eff. July 1, 1992.*

SECTION .1100 - LOCAL ABC BOARDS: RELATIONSHIP WITH STATE COMMISSION

04 NCAC 02R .1101 COMMON INTEREST

It shall be the policy of the Commission to advise and consult with the local boards regarding matters of common interest to the alcoholic beverage control system.

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1102 LOCAL RULES

(a) Submitted to Commission. A copy of all rules or amendments thereto that may be adopted by a local board to govern the operation of ABC stores or the enforcement of the ABC laws shall be submitted to the Commission at least 15 days prior to the date on which it is proposed that those rules or amendments are to become effective.

(b) Power to Approve. In the absence of notice from the Commission to the contrary, those rules or amendments thereto shall stand approved.

History Note: Authority G.S. 18B-203(a)(10); 18B-207;

Eff. January 1, 1982;

Amended Eff. May 1, 1984.

04 NCAC 02R .1103 AUDITS TO BE FORWARDED TO COMMISSION

Two copies of the audit of the accounts and conditions of each local board shall be forwarded to the Commission by the auditing firm employed to make said audit.

History Note: Authority G.S. 18B-205; 18B-207; 18B-702(c);

Eff. January 1, 1982.

04 NCAC 02R .1104 COST OF AUDIT

The cost of any audit or examination of records conducted under authority of G.S. 18B-203(4) may be assessed to local boards being audited or examined, at the discretion of the Commission.

History Note: Authority G.S. 18B-205; 18B-207; 18B-702(e);

Eff. January 1, 1982.

SECTION .1200 - OPENING AND DISCONTINUANCE OF STORES

04 NCAC 02R .1201 COMMISSION PROHIBITED FROM ENTERTAINING COMPLAINT

The Commission shall not entertain any complaint or petition protesting the action of any local board in discontinuing the operation of any existing ABC store or in refusing to establish an additional store or stores at any particular location.

History Note: Authority G.S. 18B-207; 18B-801;

Eff. January 1, 1982.

04 NCAC 02R .1202 COMMISSION TO CONSIDER OBJECTIONS

The Commission will consider objections to the opening of new ABC stores or the continuance of existing stores, but only upon showing that the local board concerned has either considered and overruled or ignored such objections.

*History Note: Authority G.S. 18B-207; 18B-801;
Eff. January 1, 1982.*

04 NCAC 02R .1203 APPROVAL OF NEW STORES

(a) Notice to Commission. The opening of any new ABC stores will not be approved by the Commission unless at least 30 days notice is given to the Chairman as to the intended location of such store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

(b) Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least three square feet;
- (2) The board shall state on the sign its intention to open an ABC store on the site;
- (3) Lettering and background colors shall be of sufficient contrast, and lettering shall be of sufficient size, so that the notice will be legible to passersby;
- (4) The sign shall be posted within three feet of the public road or sidewalk that will run in front of the proposed store, or if the proposed store will be in a shopping center, the sign shall be posted on the front exterior of the existing storefront or building.

*History Note: Authority G.S. 18B-207; 18B-801;
Eff. January 1, 1982;
Amended Eff. July 1, 1992.*

04 NCAC 02R .1204 NEW STORES PROHIBITED IN CERTAIN AREAS

New stores should not be opened in any area which is principally residential, in unreasonable proximity to any church, school or similar institution, in any slum district or other similarly undesirable area or at any location where sufficient parking facilities cannot be made available to avoid traffic congestion.

*History Note: Authority G.S. 18B-207; 18B-801;
Eff. January 1, 1982.*

04 NCAC 02R .1205 CLOSING OF STORE

*History Note: Authority G.S. 18B-207; 18B-801;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

SECTION .1300 - STORAGE AND DISTRIBUTION OF SPIRITUOUS LIQUORS: COMMERCIAL TRANSPORTATION

04 NCAC 02R .1301 DEFINITIONS

As used in this Subchapter:

- (1) "Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors.
- (2) "Distressed liquor" means liquor which is not saleable due to adulteration, or damage to the bottle, label or tax seal.
- (3) "Operator" or "Contractor" means the person or persons responsible for carrying out the storage and distribution of spirituous liquors at the state ABC warehouse.
- (4) "State ABC warehouse" means the contractor-operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.

*History Note: Authority G.S. 18B-101; 18B-207;
Eff. January 1, 1982.*

04 NCAC 02R .1302 STORAGE: DELIVERIES: SECURITY

(a) Storage. Private warehouse contractors performing the receipt, storage and distribution functions will be responsible for:

- (1) Allocating space in the warehouse for each item listed on the price list published by the Commission. Space allocated will be based on sales volume in terms of the number of days supply within the limitations of space in the warehouse;
- (2) Developing and publishing a delivery schedule to promote efficient distribution of spirituous liquors to all local boards, which shall be subject to approval of the Commission. Orders and shipments over and above the quantity on the approved schedule may be made as mutually agreed between the local boards and the contractor. All orders over the quantity on the schedule will be accepted when deemed economically feasible by the contractor.

- (3) Developing and publishing standard operating procedures not covered by these Rules for use by the contractor and local boards. All procedures published will be subject to approval of the Commission.
- (b) Deliveries and Shipments. The processing of shipments upon receipt by the local boards will be as follows:
- (1) An off-loading check sheet will be provided with the shipment that reflects the items and quantities being delivered in numerical order, and the quantities shall agree with those on the Invoice Bills of Lading. The system used for off-loading shall be such that an accurate count of the merchandise is made and all overages or shortages can be verified by the driver before any exceptions entries are made on the invoices or transmittal sheet;
 - (2) A statement of account will be provided with each shipment and is the billing document for the bailment fee and the bailment surcharge. If there are no overages, shortages or breakage, the white copy of the statement of account is for the local board's record and the yellow copy shall be attached to the local board's remittance. The statement of account number should be entered on the check or check stub;
 - (3) If there is an overage which is accepted by the local board, the number of cases shipped on the invoice bill of lading should be lined through. Enter the quantity over by product code number in the "remarks" block of the invoice bill of lading. If the item over is not listed on the invoice bill of lading enter the quantity by code number on the "cases over/short" line of the invoice transmittal sheet. Retain the statement of account and make remittance as indicated in Paragraph (2) of this Rule. Upon return of the invoice bills of lading a debit adjustment will be issued with a statement of account for the bailment fee covering the cases over. The debit adjustment will have either the original invoice or order number in the customer order number box as a cross reference;
 - (4) If there is an overage that is not accepted by a local board, enter the quantity by code number on the "cases over/short" line of the invoice transmittal sheet and return the merchandise to the contractor's warehouse;
 - (5) If there is a shortage, line through the number of cases shipped on the invoice bill of lading without obliterating the original figure. Enter the quantity short by product code number in the "remarks" block of the invoice bill of lading. Return the statement of account with the invoice bills of lading. A credit adjustment will be issued based on the entry in the "remarks" block of the invoice bill of lading with a 900XXX series invoice number. A corrected statement of account will be issued reflecting the original dollar amount, the credited amount and a new total due;
 - (6) Breakage discovered during the unloading process may be handled either as a shortage in shipment [see Paragraph (5) of this Rule] with the note in the "remarks" block of the invoice bill of lading indicating that the case was returned due to breakage; or the case may be retained with the number of bottles broken by code number entered immediately below the "cases over/short" line of the invoice bill of lading and the contractor will pay the local board for the broken bottles. If the breakage involves a case that is an overage not accepted by the local board, the procedures in Paragraph (4) of this Rule will be followed;
- (c) Security Measures. Security of the merchandise during the delivery process shall be as follows:

- (1) The conveyances (trucks and trailers) shall be secured with a lock and serially numbered metal seal by the contractor. Each local board will be issued a key that will unlock all the locks used by the contractor;
 - (2) The seal numbers will be entered on the "Seal Nos." line of the invoice transmittal sheet. Extra seals will be included in sealed envelopes for resealing the unit when shipments are destined for more than one local board and for the return trip after final delivery;
 - (3) The local board supervisor or his designated representative shall check the seal number on the unit with the number on the invoice transmittal sheet upon arrival of a shipment. If the numbers correspond the unit shall be unlocked by the local board's representative. If the numbers do not correspond the contractor shall be contacted for further instructions;
 - (4) The local boards shall limit the accessibility of the key to a minimum number of personnel and shall not allow the contractor's driver or his assistant to remove the seal or have the key in his possession at any time.
- (d) Local boards shall not pick up merchandise from the warehouse.

*History Note: Authority G.S. 18B-203; 18B-207;
Eff. January 1, 1982; Amended Eff. May 1, 1984.*

04 NCAC 02R .1303 COMMERCIAL TRANSPORTATION: PERMIT AND BOND REQUIRED

- (a) Any person transporting spirituous liquors into and through the State of North Carolina shall first give a bond of one thousand dollars (\$1,000) as required by G.S. 18B-1115(e) and secure a blanket fleet permit for the transportation of spirituous liquors signed by the chairman or administrator of the Commission. That permit shall designate the spirituous liquors to be shipped.
- (b) Driver to Possess Permit. Any person applying for and receiving this permit shall require the driver or operator of any truck, tractor, or trailer to have in his possession a copy of the permit together with the bills of lading of the spirituous liquors being transported disclosing the consignor and consignee of the spirituous liquors being transported.
- (c) Commission to Provide Forms. Blank forms for the bond will be supplied by the Commission upon request.

- (d) A local board owning and operating trucks for the purpose of transporting spirituous liquors from a local warehouse to the various local stores within an ABC system shall not be required to give bond and shall be permitted to operate its trucks without a common carrier permit.

*History Note: Authority G.S. 18B-207; 18B-1115;
Eff. January 1, 1982;*

Amended Eff. May 1, 1984.

04 NCAC 02R .1304 TRANSPORTATION FROM STATE ABC WAREHOUSE

Except as specifically authorized by the Commission, no spirituous liquors shall be transported within, into, or through this State for delivery to a local ABC store or board except from the state ABC warehouse.

*History Note: Authority G.S. 18B-204(a); 18B-207; 18B-701(1);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1305 DIRECT SHIPMENTS

(a) A direct shipment is a shipment of spirituous liquors shipped from a distiller or a warehouse, either within or outside the State, that stores the distiller's product directly to a local board without passing through the state ABC warehouse.

(b) Direct shipments may be allowed by the Commission in emergency situations or in a situation that is mutually advantageous to local boards, the Commission and the operator of the state ABC warehouse (for example, commemorative bottles).

(c) Direct shipment shall have written approval from the Commission. Merchandise authorized to be shipped direct will be consigned to the distiller's account at the state ABC warehouse in care of the local board. The local board shall acknowledge receipt of the merchandise on the shipping documents and forward them to the contractor for processing through the accounting system as though the merchandise were shipped from the warehouse.

*History Note: Authority G.S. 18B-109(a); 18B-207; 18B-701(1);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS

04 NCAC 02R .1401 PURCHASE LIMITED TO APPROVED BRANDS

Except for special orders, no purchases of any spirituous liquor or fortified wine shall be made by any local board other than brands approved for resale in ABC stores by the Commission.

*History Note: Authority G.S. 18B-207; 18B-800(c);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1402 PERMIT REQUIRED TO SELL ALCOHOLIC BEVERAGES

No purchase of any spirituous liquor or fortified wine for resale in ABC stores shall be made by any local board from any person that does not hold a permit from the Commission authorizing the sale of those beverages to the local boards, except that approved brands of taxpaid liquor may be purchased for resale from the board of county commissioners of any county for an amount not to exceed the usual wholesale price of the liquor when liquor has been confiscated for a violation of the ABC laws. A local board shall purchase fortified wine only from a North Carolina wholesaler who has been issued a wine wholesaler permit.

*History Note: Authority G.S. 18B-207; 18B-304(a); 18B-503(e); 18B-1107(a)(2);
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1403 DIRECT ORDERS BY LOCAL BOARD

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982;
Repealed Eff. May 1, 1984.*

04 NCAC 02R .1404 SPECIAL ORDERS

The Commission will approve special orders when a local board has a request from a customer for one or more cases of merchandise not on the approved list, including container sizes not on the approved list, provided the following steps are taken:

- (1) The local board requests that the Commission obtain the price from the vendor, including freight, bailment surcharge and bailment; the Commission determines the retail price and advises the local board making the request;
- (2) The local board advises the customer of the retail price for the particular case of merchandise. If the customer places an order, the entire purchase price is at that time paid to the local board, and the Commission is advised that the local board has a bona fide order;
- (3) The Commission places the order with the proper vendor and the merchandise is shipped to the state ABC warehouse for delivery to the local board with the next regularly scheduled shipment to the local board; and

- (4) The local board reports the sale of each case of merchandise sold on its monthly report to the Commission.

*History Note: Authority G.S. 18B-207; 18B-800(c); 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1405 COMMEMORATIVE BOTTLES

The Commission may approve local boards' orders and sales of specially designed bottles commemorating particular events, occasions, or ceremonies, provided the following requirements are complied with:

- (1) local ABC systems procure Commission approval prior to ordering commemorative bottles;
- (2) advertising borne upon commemorative bottles is limited to eleemosynary enterprises only (i.e., ordinary profit-oriented businesses will not be permitted to advertise themselves or their products via commemorative bottles);
- (3) except as otherwise expressly authorized by the Commission in the case of the smaller local boards, a local board orders a minimum of 3,000 bottles for any specific commemorative occasion; and
- (4) alcoholic beverages contained in the bottles are bona fide brands listed and approved by the Commission.

*History Note: Authority G.S. 18B-203(a)(5); 18B-207; 18B-800(c);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1406 RECORDS REQUIRED

A record of all orders, receipts, invoices, and payments shall be maintained by local boards and be available for inspection by any representative of the Commission at any reasonable time. More specifically, local boards shall retain records as follows:

- (1) sales report (until annual audit completed),
- (2) warehouse report (one year),
- (3) daily store report (until annual audit completed),
- (4) stock difference report (three years),
- (5) receiving report (until annual audit completed),
- (6) clerk's daily sales and cash report (until annual audit completed), and
- (7) paid invoices (three years).

In addition, local boards shall retain the Loss and Damage Claim records and required records related to the sale of mixed beverages for a period of three years.

History Note: Authority G.S. 18B-203(a); 18B-205; 18B-207; 18B-702(c),(e);

*Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1407 PAYMENT

- (a) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment fee within 30 days of receipt of the statement.
- (b) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment surcharge within 15 days of receipt of the statement.
- (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.

*History Note: Authority G.S. 18B-207; 18B-702(e);
Eff. May 1, 1984;
Amended Eff. July 1, 1992.*

SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR

04 NCAC 02R .1501 PRICE INCREASES

Distillers shall not increase F.O.B. prices except at a regularly scheduled effective date of the Commission's official price list, namely: February 1, May 1, August 1, and November 1 of each year.

*History Note: Authority G.S. 18B-203(a)(3); 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1502 MARKUP FORMULA

(a) On every delivered case of spirituous liquors, there is to be added a 78.8400 percent markup, which is derived by the following formula: (x) equals the base price of the case, including freight and bailment charges. Thirty-six hundredths percent equals the markup allowed local boards; therefore, 1.3600(x) equals the delivered case cost plus the 36.00 percent local markup, or the "retail price," excluding all taxes.

Example:

360000(x) local markup
.380800(x) state tax [28% of 1.3600(x)]
.047600(x) state tax retained locally [3.5% of 1.3600(x)]
.788400(x) total markup

(b) The selling price of spirituous liquor, which includes the cost of goods, local markup and all taxes, is derived by following these steps:

- (1) Determine the subtotal case cost by adding base case cost, freight and bailment together;

- (2) Multiply the subtotal case cost by 1.788400, to four decimals;
- (3) Add the bailment surcharge as determined by the commission;
- (4) Divide the result by the number of bottles in the case;
- (5) Add five cents (\$.05) rehabilitation tax [Add one cent (\$.01) for bottles 50 ml. or less];
- (6) Add five cents (\$.05) for the local board charge [Add one cent (\$.01) for bottles 50 ml. or less];
- (7) Round the result to an integer evenly divisible by five cents (\$.05). The breaking point is one cent (\$.01), 1 mill; the mill is underlined.
 - (A) If cent equals \$.00, it remains \$.00;
 - (B) If cent equals \$.05, it remains \$.05;
 - (C) If cent equals \$.010, (if mill is 0), round downward to \$.00;
 - (D) If cent equals \$.011, (if mill is 1-9), round upward to \$.05;
 - (E) If cent equals \$.060, (if mill is 0), round downward to \$.05;
 - (F) If cent equals \$.061, (if mill is 1-9), round upward to \$.10;
 - (G) If cent equals \$.411, .42, .43, .44, round upward to \$.45;
 - (H) If cent equals \$.461, .47, .48, .49, round upward to \$.50;
- (8) The result is the retail selling price per bottle.

History Note: Authority G.S. 18B-203(a)(3); 18B-207; 18B-804;

Eff. January 1, 1982;

Amended Eff. November 1, 1993; August 1, 1991; November 1, 1988; June 1, 1986.

04 NCAC 02R .1503 SPECIAL PURCHASE ALLOWANCES; POST OFFS; PASS THROUGH

- (a) Temporary Price Reductions. The Commission will, from time to time, reduce the retail prices of selected liquor products to reflect manufacturer or importer offers of special price reductions.
- (b) Selection of Items. Individual liquor products will be selected for retail price reductions based on the following criteria:
 - (1) Amount of reduction offered by industry member;
 - (2) Profitability of product;
 - (3) Sales history of product;
 - (4) Quantity of product available; and
 - (5) Marketing support offered by industry member.
- (c) Offers of Reductions. In order for a product to be considered, an industry member shall file, within the time set by the Commission, special purchase allowances offered for its products.
- (d) Time Periods. If approved by the Commission, the reduction of the retail price of a liquor product will be in effect for a period of 30 days. The Commission will notify industry members and local boards at least 30 days in advance of the effective date of a reduced price for each approved price reduction.
- (e) Supplemental Price Lists. The Commission will publish additional price lists indicating price reductions to supplement the quarterly price lists published in February, May, August and November of each year. Supplemental price lists shall be made available by each local board in each of its ABC stores, and all reduced

prices shall be posted by either affixing the price of the product to the shelf or affixing a price sticker on the container. Additional signs may be utilized by an ABC store to notify customers of the price reductions.

(f) Reduced Prices Effective Statewide. A local board that sells a product selected for a temporary price reduction shall sell that product at the reduced price for the entire period the lower price is in effect.

*History Note: Authority G.S. 18B-203(a)(3); 18B-207; 18B-702(e); 18B-804; 18B-807;
Eff. July 1, 1992.*

SECTION .1600 - WAREHOUSE STORAGE OF SPIRITUOUS LIQUORS

04 NCAC 02R .1601 PERMIT REQUIRED

Permits to store spirituous liquors will be issued to privately-owned bonded warehouses when application has been made to the Commission if the applicant complies with the conditions as set forth in this Section and the requirements of G.S. 18B-900.

*History Note: Authority G.S. 18B-204; 18B-207; 18B-900;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1602 INSPECTION UPON APPLICATION

Upon receipt of an application for a storage permit from a privately-owned bonded warehouse, the Commission shall cause an inspection to be made of the warehouse to determine whether the warehouse has adequate security measures necessary for safe and proper storage and whether the warehouse is a safe and proper physical structure for the storage of spirituous liquors.

*History Note: Authority G.S. 18B-204; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1603 REQUIREMENTS FOR STORAGE

All privately-owned bonded warehouses holding permits for the storage of spirituous liquors are required to:

- (1) store all liquor separately and apart from other merchandise;
- (2) store all military codes separately and apart from state codes;
- (3) store all liquor of the same code together and spaced evenly for inventory purposes;

- (4) submit to the Commission monthly reports of all spirituous liquors received and delivered so that a perpetual inventory may be kept at the Commission, which report must match the inventory at the bonded warehouse at all times and upon inspections for inventory purposes;
- (5) take at their expense, and submit to the Commission, semi-annual inventories of all spirituous liquors being held in the bonded warehouse, which inventories may be observed by representatives of the Commission or the State Auditor's Office;
- (6) return all distressed liquor received to the distiller within 30 days of its receipt, or destroy in the presence of a distiller representative;
- (7) destroy, in the presence of the distiller representative for the brand involved, all liquor that becomes distressed after it is received.

*History Note: Authority G.S. 18B-204; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1604 PROHIBITED PRACTICES

- (a) The removal of any spirituous liquors except as provided for in these Rules to any place except the state ABC warehouse, military posts, points outside the State of North Carolina or the shipping distillery is prohibited.
- (b) No liquor, distressed or otherwise, shall be given to any distiller representative or employee of the warehouse but shall be destroyed and recorded in the Unsalable Merchandise Report in the presence of a distiller representative.

*History Note: Authority G.S. 18B-204; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1605 INSPECTION OF PREMISES AND RECORDS

All warehouses receiving a permit for the storage of spirituous liquors shall make available to the Commission on request all records, invoices, and inventories pertaining to the storage of spirituous liquors. All spirituous liquors inventories shall be kept segregated and filed according to distillery name. These records shall be retained by the warehouse for a period of three years.

*History Note: Authority G.S. 18B-204; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1606 SUSPENSION OF PERMIT

(a) Notice of suspension and discontinuance of the storage of spirituous liquors by privately-owned bonded warehouses may be given to any person holding storage permits by the Commission. Upon receiving this notice, permittees shall halt the storage of spirituous liquors until the Commission has by appropriate action declared that storage may be resumed in the warehouse. Upon notification, the warehouse permittee shall remove all spirituous liquors to a proper storage facility within 30 days.

(b) The Commission may revoke or suspend the permit of any person violating any order issued pursuant to these Rules.

*History Note: Authority G.S. 18B-204; 18B-207;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES

04 NCAC 02R .1701 REMOVAL OF BEVERAGES FROM ABC STORES

(a) Spirituous liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:

- (1) The spirituous liquor is sold at retail; or
- (2) The liquor is returned to the state ABC warehouse.

Any spirituous liquor leaving the local board without being sold at retail or returned to the state ABC warehouse constitutes nontaxpaid spirituous liquor.

(b) Distressed Liquor. Distressed liquor shall be destroyed and the destruction witnessed by the manager or his designed and a distiller representative. A Destruction of Unsalable Merchandise Report shall be completed and signed by the witnessing parties. Copies of the report shall be sent to the distiller and the Commission.

(c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This Rule shall not prohibit purchases made by the use of credit cards where such sales are permitted by the Commission.

*History Note: Authority G.S. 18B-806; 18B-807;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1702 SALE OF CERTAIN BEVERAGES BELOW RETAIL PRICE

The Commission may authorize a local board to sell certain alcoholic beverages at below the uniform price.

*History Note: Authority G.S. 18B-804(a); 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1703 STORES: STATE LIST

- (a) Appearance of Stores. Stores shall be well-lighted and immaculately clean at all times. Stores not in compliance may be ordered closed by the Commission until deficiencies are corrected.
- (b) State List to be Available. Every store shall make available for its customers' inspection a copy of the most current complete state price list and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

*History Note: Authority G.S. 18B-807;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1704 SALE OF WINE

*History Note: Authority G.S. 18B-800(b); 18B-804(c); 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. July 1, 1992.*

04 NCAC 02R .1705 HOURS OF SALE

- (a) No local board shall sell any alcoholic beverages at any store:
 - (1) after the closing hours as established by the local board; provided, however, that no sales shall be made between 9:00 p.m. and 9:00 a.m.;
 - (2) on any day the local board so designates;
 - (3) on Sundays; and
 - (4) on the following holidays: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
- (b) No employee shall enter a store at any time the store is not open, as designated in this Rule, except by permission of the store manager.

*History Note: Authority G.S. 18B-802; 18B-807;
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1706 CUSTOMER SERVICE

It is the duty of the manager and the employees in every store to see that customers are waited on promptly, quietly and courteously. Loitering of customers should be discouraged.

*History Note: Authority G.S. 18B-807;
Eff. January 1, 1982.*

04 NCAC 02R .1707 SALES RECOMMENDATIONS PROHIBITED

*History Note: Authority G.S. 18B-807;
Eff. January 1, 1982;
Repealed Eff. July 1, 1992.*

04 NCAC 02R .1708 MAXIMUM QUANTITIES ALLOWED TO BE SOLD

Employees of local boards are expressly prohibited from selling more than five liters of fortified wine or spirituous liquor or more than five liters of the two combined to a person at any one time, except as authorized under G.S. 18B-403 and G.S. 18B-404.

A copy of all Purchase/Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase/Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

*History Note: Authority G.S. 18B-207; 18B-403; 18B-404; 18B-807;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1709 ALCOHOL REHABILITATION COLLECTIONS PERMITTED

- (a) Local boards may provide containers for the collection of voluntary contributions to alcohol rehabilitation programs approved by the Commission.
- (b) Collection or solicitation of contributions for any other purpose is prohibited.

History Note: Authority G.S. 18B-207; 18B-807;

Eff. May 1, 1984.

04 NCAC 02R .1710 CREDIT CARD SALES

A local board may allow customers to purchase alcoholic beverages with credit cards so long as all the following conditions are met:

- (1) The local board files with the Commission a written request for approval to implement the use of credit cards, and furnishes in that request the following:
 - (a) proposed date of implementation;
 - (b) proposed bank or institution for clearing;
 - (c) proposed discount rate; and
 - (d) whether instant verification equipment will be used;
- (2) The local board must receive written authorization from the Commission to allow credit card sales; and
- (3) The minimum alcoholic beverage purchase that may be charged to a credit card is twenty dollars (\$20.00).

*History Note: Authority G.S. 18B-203(b); 18B-702(e); 18B-807;
Eff. July 1, 1992.*

SECTION .1800 - PURCHASE-TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES

04 NCAC 02R .1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR

(a) Local Board to Issue. Whenever a person desiring to purchase more than 20 liters of unfortified wine, or more than five liters of either fortified wine or spirituous liquor or five liters of the two combined, applies to a local board for a Purchase-Transportation Permit, the local board shall issue the purchaser such a permit, following the guidelines of G.S. 18B-403.

(b) Form. The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:

- (1) the name and location of the store from which the purchase is to be made;
- (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;
- (3) destination of the alcoholic beverages including name and address of location;
- (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;
- (5) time and date of commencement and conclusion of special occasion, if any;
- (6) quantity and type of alcoholic beverages purchased;
- (7) signature of local ABC official issuing the permit;

(8) name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

(c) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser will give the store from which the alcoholic beverages are purchased.

*History Note: Authority G.S. 18B-207; 18B-303(a); 18B-403;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1802 MIXED BEVERAGE PERMIT/INVOICE FORM

(a) Providing Form. A local board in a jurisdiction in which the sale of mixed beverages is lawful shall provide to a mixed beverages permittee ordering and purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of liquor by the permittee.

(b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in triplicate and shall show on the face of the form the information required by S .0502 of these Rules. The local board shall retain one copy in its permanent records for a period of three years and shall give one copy of the permit/invoice to the mixed beverages permittee or designated employee to accompany the liquor during transport.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(b);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1803 CABINET PERMITTEES; PURCHASE-TRANSPORTATION PERMITS

(a) Approved Container Sizes; Authorized Jurisdictions. Local ABC Boards in the following counties may sell 50 milliliter, 355 milliliter, and 375 milliliter containers of liquor to a hotel that has been issued a Guest Room Cabinet Permit: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake.

(b) Purchase-Transportation Permits. A local board receiving an order from a guest room cabinet permittee for liquor intended for resale from guest room cabinets shall provide a separate Purchase-Transportation Permit/Invoice form for the permittee in the same manner as for sales of liquor for mixed beverages permittees, as specified in Rule .1802 of this Section. The Purchase-Transportation Permit/Invoice shall contain all the information required by 4 NCAC S .0502(b) of this Chapter, and in addition, shall show on the face of the form the permittee's Guest Room Cabinet Permit number. One copy of the Purchase-Transportation Permit/Invoice form for guest room cabinet permittees shall be retained by the local board for a period of three years.

(c) Minimum Orders. A local board may require a guest room cabinet permittee to make a minimum purchase of multi-bottle packages or "sleeves" packaged by the manufacturer or bottler, but may not require minimum purchases in case quantities except as authorized by Rule .1404 of this Subchapter.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(d); S.L. 1991, c. 565, s. 7;
Eff. July 1, 1992.*

04 NCAC 02R .1804 TAX STAMP PROCEDURES FOR GUEST ROOM CABINET PERMITTEES

(a) A local board selling liquor for resale in guest room cabinets shall either affix the mixed beverages tax stamp to each individual container of liquor sold to a guest room cabinet permittee, or shall give the permittee one tax stamp for each container purchased so the permittee may affix the stamps to the containers so long as the unaffixed stamps conform to the requirements in Paragraph (b) of this Rule.

(b) A local board choosing to give unaffixed mixed beverages tax stamps to a guest room cabinet permittee shall use a stamp substantially different in size and color from the mixed beverages tax stamp used for regular mixed beverages sales.

(c) Each mixed beverages tax stamp for liquor sold to a guest room cabinet permittee shall contain the same information required by Rule .1901 of this Subchapter, except that the permittee's Guest Room Cabinet Permit number shall appear on the stamp in lieu of the permittee's Mixed Beverages Permit number.

(d) Nothing in this Rule shall be construed to allow a local board to give unaffixed mixed beverages tax stamps to a mixed beverages permittee for liquor containers purchased for resale in mixed beverages.

*History Note: Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(9); 18B-807;
Eff. July 1, 1992.*

04 NCAC 02R .1805 LOCAL RULES REQUIRED FOR GUEST ROOM CABINET SALES

(a) Each local board selling liquor to a hotel with a Guest Room Cabinet Permit shall adopt rules governing purchases of liquor by guest room cabinet permittees and shall submit those rules to the Commission for approval as required by Rule .1102 of this Subchapter.

(b) Areas to be regulated shall include:

- (1) minimum purchase requirements;
- (2) responsibility for affixing tax stamps;
- (3) pre-ordering requirements;
- (4) special orders; and
- (5) times when sales shall be made.

(c) Upon approval by the Commission, the local board shall provide a copy of such rules to each guest room cabinet permittee, and shall have a copy available on the premises of the store from which sales will be made.

*History Note: Authority G.S. 18B-203(a)(10); 18B-207; 18B-701(2); 18B-807;
Eff. July 1, 1992.*

SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES

04 NCAC 02R .1901 MIXED BEVERAGES TAX STAMP

(a) Prior to the sale of any container of spirituous liquor to a permittee, the local board shall affix to the container a mixed beverages tax stamp that indicates the following:

- (1) local board system of sale,
- (2) permittee's transaction number,
- (3) permittee's Mixed Beverage Permit number.

(b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in the case of a container bearing no original label the stamp shall be affixed to any conspicuous portion of the container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be sufficient to stamp the exterior of the case.

(c) For sales of liquor to a guest room cabinet permittee, a local board may affix the mixed beverages tax stamp to any portion of the container other than the cap or closure. In lieu of affixing the stamp to each container purchased by a guest room cabinet permittee, a local board may choose to give to the guest room cabinet permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized by Rule .1804 of this Subchapter.

*History Note: Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807;
Eff. January 1, 1982;
Amended Eff. July 1, 1992; May 1, 1984.*

04 NCAC 02R .1902 DESIGNATION OF STORE

The Commission may authorize a local board that sells liquor to mixed beverages permittees to designate more than one store for this purpose if the volume of sales or the size of the area being served is sufficiently large enough to warrant more than one store.

*History Note: Authority G.S. 18B-207; 18B-404(c);
Eff. January 1, 1982;
Amended Eff. May 1, 1984.*

04 NCAC 02R .1903 LOCAL BOARD PRODUCT IDENTIFICATION

Prior to the sale of any container of spirituous liquor to the public at retail, the local board may affix to the container or the individual container's packaging a stamp that indicates the following:

- (1) local board system of sale; and
- (2) local board store number.

History Note: Authority G.S. 18B-807;

Eff. May 1, 1984;

Amended Eff. September 1, 1993; July 1, 1992.